LANDLORD AND TENANT — ABANDONMENT OF LEASE — DUTY OF LANDLORD TO ACCEPT NEW TENANT TO MINIMIZE DAMAGES. — A lease stipulated against an assignment or a sublease without the lessor's consent, and allowed him the option of re-entering and reletting the premises in case they were vacated. The lessee vacated during the term, and thereafter offered a new tenant, whom the lessor refused to accept. The lessee claimed that the lessor was bound to accept a proper tenant to minimize damages. *Held*, that the lessor recover the full amount of the rent. *Muller* v. *Beck*, 110 Atl. 831 (N. J.).

It is a familiar rule in contracts that a plaintiff cannot recover for such damages as he might reasonably have prevented. *Miller* v. *Mariner's Church*, 7 Me. 51; *Roberts* v. *Lehl*, 27 Colo. App. 351, 149 Pac. 851; *Moses* v. *Autuono*, 56 Fla. 499, 47 So. 925. But it is also established that a landlord upon the tenant's abandonment is under no duty to relet to minimize the amount of his recovery. *Bowen* v. *Clarke*, 22 Ore. 566, 30 Pac. 430; *Becar* v. *Flues*, 64 N. Y. 518; *Patterson* v. *Emerick*, 21 Ind. App. 614, 52 N. E. 1012. But see *contra*, *West Side Auction House Co.* v. *Conn. Mutual Life Ins. Co.*, 186 Ill. 156, 57 N. E. 839; *Sears* v. *Curtis*, 189 Ill. App. 420. Though it is true that the landlord's recovery is for rent rather than for damages, the two principles are hardly reconcilable. After the breach of a personal service contract, the plaintiff must make reasonable effort to find new employment. *King & Graham* v. *Steiren*, 44 Pa. St. 99; *Howard* v. *Daly*, 61 N. Y. 362. So it would seem just to impose on the landlord a similar duty to relet. Nor would the duty be inconsistent with the continuance of the lease, for the landlord in most jurisdictions may rerent for the tenant's benefit without thereby effecting a surrender. *Auer* v. *Penn*, 99 Pa. St. 370; *Oldewurtel* v. *Wiesenfeld*, 97 Md. 165, 54 Atl. 969; *Brown* v. *Cairns*, 107 Ia. 727, 77 N. W. 478. *Contra*, *Gray* v. *Kaufman Dairy, etc. Co.*, 162 N. Y. 388, 56 N. E. 903. Of course the principal case may be distinguished on the particular terms of the lease. But in so far as the case impliedly stands for the denial generally of any duty to relet, it asserts a principle that may well be challenged.

LANDLORD AND TENANT — CONDITIONS AND COVENANTS IN LEASES — WAIVER OF FORFEITURE — ACCEPTANCE OF RENT UNDER PROTEST. — A landlord gave a weekly tenant notice to quit. The tenant remained in possession and tendered rent accruing after expiration of the notice. The landlord accepted the money but stipulated that it was for "use and occupation" and that the tenancy was not thereby recognized. In a suit by the landlord to recover possession, the tenant set up the defense that the plaintiff by this acceptance had waived the notice to quit. *Held*, that the defense is valid. *Hartell* v. *Blackler*, [1920] 2 K. B. 161.

A landlord brought action against a tenant for years to recover possession, on the tenant's breach of covenant to pay rent. The tenant took advantage of a statute and stopped the proceedings by paying to the landlord the rent in arrear (15 and 16 VICT., c. 76, § 212). The landlord then brought a second action on a cause of forfeiture which had existed before the previous action. The tenant set up the defense that the cause for forfeiture had been waived by the acceptance of rent accruing thereafter in the first suit. *Held*, that the defense is invalid. *Evans* v. *Enever*, [1920] 2 K. B. 315.

For a discussion of these cases, see NOTES, p. 203, *supra*.

LANDLORD AND TENANT — HOLDING OVER — ODD TERM LESS THAN A YEAR RENEWED BY ACCEPTANCE OF RENT FROM TENANT HOLDING OVER. — Premises were let to defendant for a term of seven months for the "seven months' rent" of $420, payable in equal monthly instalments. Defendant held over for some time, the landlord accepting the monthly rent. In an action of ejectment by plaintiff the matter turned on the length of the term

created by the acceptance of rent. *Held*, that it was another tenancy for seven months. *Farbman* v. *Meyers*, 77 Leg. Intel. 642.

Where a tenant holds over and the landlord assents, the length of the new term is fixed by implication of law. *Robinson* v. *Holt*, 90 Ala. 115, 7 So. 441; *Souhami* v. *Brownstone*, 177 N. Y. Supp. 726. Most cases hold that where the original tenancy was for a year or more the new tenancy is from year to year or for a year. *Smith* v. *Bell*, 44 Minn. 524, 47 N. W. 263; *Condon* v. *Brockway*, 157 Ill. 90, 41 N. E. 634. The view has also been taken that the length of the period for which rent is computed delimits the new term. *Kaufman* v. *Mastin*, 66 W. Va. 99, 66 S. E. 92. Where the expired lease was for a period less than a year it has been held that the new term was of the same duration as the old one. *Waterman* v. *Le Sage*, 142 Wis. 97, 124 N. W. 1041; *Wood* v. *Gordon*, 18 N. Y. Supp. 109; *Ballenbacker* v. *Fritts*, 98 Ind. 50. But the implied term has also been decided to be from month to month. *Eastman* v. *Richard & Co.*, 29 Can. Sup. Ct. Rep. 438. In the case of odd termed leases, as in the principal case, it would seem that the parties rarely contemplate the duplication of the original period. In the absence of needed legislation it would therefore be better to imply a tenancy from month to month.

MARRIAGE — NULLIFICATION — FRAUD WHERE MARRIAGE IS UNCONSUMMATED. — Immediately after her marriage and before its consummation the petitioner discovered that her husband was a repulsively immoral man and left him. She now asks for nullification of the marriage on the ground of fraud. *Held*, that a decree will issue. *Ysern* v. *Horter*, 110 Atl. 31 (N. J.).

Fraud as to material facts which induce consent to marriage is a well recognized ground for annulment. See Franklin G. Fessenden, "Nullity of Marriage," 13 HARV. L. REV. 110, 113. English courts refuse a decree except where the fact of impotency or the identity of a party has been concealed by fraud. *Napier* v. *Napier*, [1915] P. 184; *Moss* v. *Moss*, [1897] P. 263. But in America courts have widened the doctrine to include cases of antenuptial pregnancy, incurable contagious disease at the time of the marriage, and intention never to consummate the marriage. *Reynolds* v. *Reynolds*, 3 Allen (Mass.), 605; *Svenson* v. *Svenson*, 178 N. Y. 54, 70 N. E. 120; *Bolmer* v. *Edsall*, 90 N. J. Eq. 299, 106 Atl. 646. See 24 HARV. L. REV. 157. Courts have refused steadily to decree annulment for misrepresentation as to disposition, habits, or moral character and have seemed to consider consummation of the marriage immaterial. *Wier* v. *Still*, 31 Iowa, 107; *Williamson* v. *Williamson*, 34 App. D. C. 536. *Contra*, *King* v. *Brewer*, 8 Misc. 587, 29 N. Y. Supp. 1114; *Weill* v. *Weill*, 104 Misc. 561, 172 N. Y. Supp. 589. The New Jersey court follows the tendency of the New York cases by holding that fraudulent concealment of immoral character is a ground for annulment if the marriage is unconsummated. The prevailing view is that consummation is not an essential of a valid marriage. *Franklin* v. *Franklin*, 154 Mass. 515, 28 N. E. 681. See 32 HARV. L. REV. 848, 849. Since the court probably would have refused annulment had there been consummation, it seems that the principal case goes too far by its destruction of the marriage status.

NEW TRIAL — GROUNDS FOR GRANTING NEW TRIAL — NECESSITY FOR PREJUDICIAL ERROR. — Plaintiff, upon the evidence, was entitled to a verdict against the defendant for either $153.90 or $169.12 or nothing. The jury returned verdict for $153. *Held*, that the *defendant* is entitled to a new trial. *De Corte* v. *Trichinsky*, 102 N. Y. Supp. 749.

The case is wrong and absurd. It is clear that a compromise verdict is not involved. Nor was the defendant prejudiced — quite the opposite. If the court did not care to correct the error summarily of its own motion, surely "*de minimis*" applies. Incidentally the costs of the motion were $30.